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By

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H.B. No., 2602

A BILL TO BE ENTITLED

AN ACT

relating to regulation of groundwater in the Edwards Aquifer by the Texas Water Commission; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 11, Water Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. EDWARDS AQUIFER WATER ADMINISTRATION

Sec. 11.501. SHORT TITLE. This subchapter may be cited as the Edwards Aquifer Water Administration Act.

Sec. 11.502. LEGISLATIVE FINDINGS. (a) The legislature finds that the water in the unique underground system of water-bearing formations known as the Edwards Limestone and Associated Formations is hydrologically interrelated to the Guadalupe, San Antonio, and Nueces River Basins and is the primary source of water for the people within the region and is vital to the general economy and welfare of this state. Also, the legislature finds that the continuous and sustained withdrawal of groundwater from the Edwards Aquifer at current or greater levels may result in damage to the Edwards Aquifer, the Comal and San Marcos Springs, and the general economy and welfare of this state.

(b) The legislature further finds that there currently is no effective regulation of the withdrawal and use of groundwater from the Edwards Aquifer and that the withdrawal and use of that groundwater will continue to increase unless and until effective

1 regulation is implemented. Thus, the legislature finds that it is  
2 necessary and appropriate to provide for the recognition and  
3 limitation of rights to withdraw groundwater from the Edwards  
4 Aquifer, in accordance with principles applicable to that unique  
5 system and not necessarily in accordance with principles applicable  
6 to surface water.

7 Sec. 11.503. DECLARATION OF POLICY. The conservation and  
8 best utilization of the Edwards Aquifer are public necessities, and  
9 it is in the interest of the people of the state to limit rights to  
10 withdraw and use groundwater from the Edwards Aquifer, to provide  
11 for the determination of groundwater rights from the Edwards  
12 Aquifer, to provide for the issuance of certificates and permits,  
13 and to provide for the administration of all such rights to the end  
14 that the groundwater resources of the Edwards Aquifer may be put to  
15 their greatest beneficial use. Therefore, this subchapter is in  
16 furtherance of the public rights, duties, and functions provided by  
17 this section and in response to the mandate expressed in Article  
18 XVI, Section 59, of the Texas Constitution, and is in the exercise  
19 of the police powers of the state in the interest of the public  
20 welfare.

21 Sec. 11.504. COMMISSION TO MAKE AND ENFORCE RULES; POLICIES.  
22 (a) The commission shall adopt rules necessary to carry out its  
23 powers and duties under this subchapter, including the adoption of  
24 rules authorizing fees for the issuance of certificates and permits  
25 and amendments to those certificates and permits.

26 (b) The powers granted by this subchapter shall be exercised  
27 in conformity with the policies prescribed by this subchapter,

1 including the:

2 (1) protection of water quality in the region of the  
3 Edwards Aquifer;

4 (2) protection of the economic stability of the region  
5 of the Edwards Aquifer by an assurance of adequate water supply;

6 (3) protection of the environmental values of the  
7 region of the Edwards Aquifer;

8 (4) protection of springflow from the Comal and San  
9 Marcos Springs;

10 (5) prevention of sustained overdraft of the Edwards  
11 Aquifer;

12 (6) recognition of historic uses and users through the  
13 issuance of certificates by the commission;

14 (7) provision for new uses and users through the  
15 issuance of permits by the commission; and

16 (8) provision for markets for the purchase, lease, or  
17 trade of groundwater rights.

18 Sec. 11.505. BOUNDARIES OF THE EDWARDS AQUIFER. (a) The  
19 commission shall define the boundaries of the Edwards Aquifer,  
20 consistent with the boundaries provided by Subsection (b) of this  
21 section.

22 (b) The lateral boundaries of the Edwards Aquifer, as used  
23 in this subchapter, are: on the north, the northern edge of the  
24 Balcones Fault Zone; on the south, the line known as the bad-water  
25 line which separates water containing less than 1000 milligrams per  
26 liter of total dissolved solids from water containing more than  
27 this concentration of total dissolved solids; on the west, the

1 divide near Brackettville in Kinney County that separates  
2 underground flow toward the Comal and San Marcos Springs from  
3 underground flow to the Rio Grande Basin; on the east, the divide  
4 northeast of Kyle in Hays County that separates underground flow  
5 toward the Comal and San Marcos Springs from underground flow to  
6 the Colorado River Basin.

7 Sec. 11.506. DEFINITIONS. In this subchapter:

8 (1) "Authorized well" means a well in the Edwards  
9 Aquifer for which a certificate has been issued under Section  
10 11.515 of this code or a permit has been obtained under Section  
11 11.508 of this code or that is exempt under Section 11.508(e) or  
12 (f) of this code.

13 (2) "Certificate" means a certificate issued by the  
14 commission under Section 11.515 of this code that recognizes and  
15 limits a right to withdraw and use an amount of groundwater from  
16 the Edwards Aquifer according to the terms and provisions of the  
17 certificate.

18 (3) "Conservation" means those practices, techniques,  
19 and technologies that will reduce consumption of groundwater,  
20 reduce the loss or waste of groundwater, improve the efficiency in  
21 the use of groundwater, or increase the recycling and reuse of  
22 groundwater so that a water supply is made available for future or  
23 alternative uses.

24 (4) "Groundwater" includes only groundwater in the  
25 Edwards Aquifer.

26 (5) "Groundwater right" means a right to withdraw and  
27 use groundwater from the Edwards Aquifer according to the terms and

1 provisions of a certificate or permit issued by the commission.

2 (6) "Holder" means a person to whom a certificate or  
3 permit is issued or transferred.

4 (7) "Reuse" means the use of groundwater for any  
5 beneficial purpose or purposes, without regard to the necessity or  
6 degree of treatment that may be required, after the groundwater has  
7 been previously used for any beneficial purpose or purposes.

8 (8) "Use for a beneficial purpose" or "beneficial use"  
9 means, without regard to priority, use for any purpose that is  
10 useful and beneficial to the user, including:

11 (A) agricultural, commercial, domestic,  
12 gardening, industrial, manufacturing, mining, municipal, pleasure,  
13 recreational, or stock raising purposes; and

14 (B) exploring for, producing, handling, or  
15 treating oil, gas, sulphur, or other minerals.

16 (9) "User" means a person who uses groundwater  
17 withdrawn from a well completed in the Edwards Aquifer.

18 (10) "Waste" means:

19 (A) the withdrawal of groundwater from the  
20 Edwards Aquifer if the groundwater withdrawn is not used for a  
21 beneficial purpose;

22 (B) the unreasonable loss of groundwater through  
23 faulty design or negligent operation of a well or water delivery or  
24 application system; or

25 (C) the use of quantities of groundwater in an  
26 amount in excess of the amount reasonably necessary for a  
27 beneficial use for a beneficial purpose.

1           (11) "Withdrawal of groundwater" means any act or  
2 failure to act that results in the taking of groundwater from the  
3 Edwards Aquifer by or through man-made facilities including the  
4 pumping of wells or allowing artesian wells to flow.

5           Sec. 11.507. RECOGNITION AND LIMITATION OF GROUNDWATER  
6 RIGHTS. (a) The owner of each well in the Edwards Aquifer that  
7 existed before January 1, 1989, is recognized to have the right to  
8 withdraw and use groundwater from that well to the extent of the  
9 maximum actual withdrawal and application of groundwater to  
10 beneficial use without waste during any calendar year from 1979 to  
11 1988, inclusive.

12           (b) The owner of a well in the Edwards Aquifer on which  
13 construction was begun before September 1, 1989, and that initially  
14 became operable after December 31, 1987, is recognized to have the  
15 right to withdraw and use groundwater from that well to the extent  
16 of the maximum actual withdrawal and application of groundwater to  
17 beneficial use without waste during either calendar year 1989 or  
18 1990. This subsection does not apply to the following:

19           (1) an individual well for which the owner submitted a  
20 claim under Section 11.509(a) of this code;

21           (2) an individual well added to a group or system of  
22 wells under Subsection (d) of this section;

23           (3) an individual well added to one or more wells of  
24 common ownership under Subsection (e) of this section, unless the  
25 commission finds the application of this subdivision to a common  
26 owner is inequitable or detrimental to the public welfare; and

27           (4) an individual well, and any withdrawal and use of

1 groundwater from that well, to the extent that the commission finds  
2 that the well would not have been begun or completed on the date of  
3 actual commencement or completion, or that the groundwater would  
4 not have been withdrawn and used by the dates and in the amounts of  
5 actual withdrawal and use, but for the enactment, or the  
6 possibility of enactment, of this subchapter.

7       (c) To the extent that a person may claim rights to withdraw  
8 and use groundwater from a well in the Edwards Aquifer other than  
9 the right recognized in Subsection (a) or (b) of this section, then  
10 all rights to withdraw and use groundwater from that well are  
11 limited, in the aggregate, to the extent of the maximum actual  
12 withdrawal and application of groundwater to beneficial use without  
13 waste during any calendar year from 1979 to 1988, inclusive, for  
14 wells described in Subsection (a) of this section or during either  
15 calendar year 1989 or 1990 for wells described in Subsection (b) of  
16 this section.

17       (d) A group or system of individual wells used together to  
18 supply groundwater on January 1, 1989, regardless of whether the  
19 groundwater from those wells is commingled, is considered to be one  
20 well for purposes of Subsections (a), (b), and (c) of this section  
21 and Sections 11.508(b) and (d) of this code.

22       (e) Individual wells owned by the same person on January 1,  
23 1989, are considered to be one well for purposes of Subsections  
24 (a), (b), and (c) of this section and Sections 11.508(b) and (d) of  
25 this code, unless the commission finds that the application of this  
26 subsection to that person is inequitable or detrimental to the  
27 public welfare.

1       (f) A right to withdraw and use groundwater from the Edwards  
2       Aquifer is subject to the conditions stated in this subchapter and  
3       other applicable laws not inconsistent with this subchapter and to  
4       the commission's right of continual supervision of the groundwater  
5       in the Edwards Aquifer.

6       Sec. 11.508. PERMIT REQUIRED. (a) Except as provided by  
7       Subsections (d), (e), (f), (g), and (h) of this section, a person  
8       may not withdraw groundwater from the Edwards Aquifer for existing  
9       or new uses or begin construction of a well or other work designed  
10       for the taking or withdrawal of groundwater for that use without  
11       first obtaining a permit from the commission to make the  
12       withdrawal.

13       (b) The commission may adopt rules governing the procedure  
14       for the issuance or denial of these permits, and may impose terms  
15       and conditions as may be necessary or appropriate to further the  
16       purposes of this subchapter.

17       (c) The commission shall give preference to uses of  
18       groundwater necessary to protect the public health, safety, and  
19       welfare in the order under Section 11.024 of this code. The  
20       commission may prescribe by rule the fees to be paid for the  
21       issuance of a permit.

22       (d) Without obtaining a permit, the owner of a well that  
23       existed before January 1, 1989, may withdraw groundwater from that  
24       well to the extent of maximum actual withdrawal and application of  
25       that groundwater to beneficial use without waste during any  
26       calendar year from 1979 to 1988, inclusive, under the right  
27       recognized by Section 11.507(a) of this code, to the extent that



1 the right is finally determined by the commission and reflected in  
2 a certificate issued under Section 11.515 of this code.

3 (e) Without obtaining a permit, a person may complete  
4 construction of a well if the construction was begun before  
5 September 1, 1989.

6 (f) Without obtaining a permit, the owner of a well on which  
7 construction was commenced before September 1, 1989, and which  
8 initially became operable after December 31, 1987, may withdraw  
9 groundwater from that well to the extent of maximum actual  
10 withdrawal and application of that groundwater to beneficial use  
11 without waste during either calendar year 1989 or 1990, pursuant to  
12 the right recognized in Section 11.507(b) of this code, to the  
13 extent that that right is finally determined by the commission and  
14 reflected in a certificate issued pursuant to Section 11.515 of  
15 this code.

16 (g) Without obtaining a permit, a person may withdraw  
17 groundwater from any authorized well and use that groundwater for  
18 domestic and livestock purposes if that well does not produce in  
19 excess of 25,000 gallons of groundwater a day for those purposes.

20 (h) Without obtaining a permit, a person may construct on  
21 the person's own property a well for the withdrawal and use of  
22 groundwater from the Edwards Aquifer for domestic and livestock  
23 purposes if the capacity of the well does not exceed 25,000 gallons  
24 of groundwater a day.

25 (i) Without obtaining a permit, a person may withdraw and  
26 use for a beneficial purpose groundwater from the Edwards Aquifer  
27 from an authorized well during periods, declared by the commission,

1 in which a surplus of groundwater exists in the Edwards Aquifer.  
2 Withdrawals of surplus groundwater during those periods may not be  
3 charged against any groundwater right but are subject to the  
4 requirement for reporting in Section 11.522 of this code and the  
5 terms and conditions as are determined by the commission.

6 Sec. 11.509. CLAIMS. (a) On or before September 1, 1990,  
7 each person claiming a right to withdraw and use groundwater under  
8 Section 11.507(a) of this code shall file a claim with the  
9 commission.

10 (b) On or before March 1, 1991, each person claiming a right  
11 to withdraw and use groundwater under Section 11.507(b) of this  
12 code shall file a claim with the commission.

13 (c) The claim must include information the commission  
14 determines necessary for the certification of the groundwater right  
15 claimed, including:

16 (1) the name and mailing address of the claimant;

17 (2) the location of each well from which groundwater  
18 is being or has been withdrawn by the claimant at any time on or  
19 after January 1, 1979, the date of commencement of construction of  
20 the well, and the date of first application to beneficial use;

21 (3) for a well described in Section 11.507(a) of this  
22 code, the volume of groundwater produced by the well and applied to  
23 beneficial use in each of the calendar years 1979 to 1988,  
24 inclusive;

25 (4) for a well described in Section 11.507(b) of this  
26 code, the volume of groundwater produced by the well and applied to  
27 beneficial use in either calendar year 1989 or 1990;

1                   (5) the beneficial use to which the groundwater is  
2 applied;

3                   (6) the place of use of the groundwater;

4                   (7) if the claim is for irrigation:

5                         (A) the legal description and a map of the land  
6 irrigated with groundwater produced from the well and the year in  
7 which the land was first irrigated;

8                         (B) the type of crops grown on the land and the  
9 cropping patterns used; and

10                        (C) the irrigation methods and devices actually  
11 used in the irrigation of the land;

12                        (8) a sworn statement that the information contained  
13 in the claim is derived from the claimant's personal knowledge and  
14 is true;

15                        (9) evidence of the claimant's title to or leasehold  
16 interest in the real property on which the well is located; and

17                        (10) other pertinent information the commission may  
18 determine.

19                   (d) The commission shall prescribe forms for the claim, but  
20 use of commission forms may not be required.

21                   (e) On or before January 1, 1990, and June 1, 1990, the  
22 commission shall have notice of the requirements of this section  
23 published once each week for two consecutive weeks in the Texas  
24 Register and in one or more newspapers with general circulation in  
25 the state. Additionally, on or before those dates, the commission  
26 shall mail the notices by first-class mail to each owner of a well  
27 in the Edwards Aquifer to the extent that those wells and the

1 ownership can reasonably be ascertained from the records of the  
2 commission or the Edwards Underground Water District.

3 (f) On sworn petition, notice, and hearing as prescribed for  
4 applications for permits and on finding of extenuating  
5 circumstances and good cause shown for failure to timely file, the  
6 commission may authorize the filing of any claim required by this  
7 section until the entry of a determination under Section 11.512(c)  
8 of this code or, if a determination has not been entered, until  
9 September 1, 1995.

10 (g) Since filing of claims to withdraw and use groundwater  
11 from the Edwards Aquifer is necessary for the conservation and best  
12 use of that groundwater, failure to file a claim in substantial  
13 compliance with this section extinguishes and bars any claim of  
14 groundwater rights to which this section applies.

15 (h) A claim submitted under this section is binding on the  
16 person submitting it and his successors in interest, but is not  
17 binding on the commission or any other person in interest.

18 (i) This section may not be construed to recognize any  
19 groundwater right other than a right recognized in Sections  
20 11.507(a) and (b) of this code or by permit in Section 11.508 of  
21 this code.

22 (j) This section does not apply to the use of groundwater  
23 from the Edwards Aquifer for domestic and livestock purposes.

24 Sec. 11.510. REGISTRY OF CLAIMS. The commission shall  
25 establish a registry of all claims received under Section 11.509 of  
26 this code. The registry shall be made available in the offices of  
27 the commission for public inspection during regular office hours.

1       Sec. 11.511. REQUEST FOR HEARING. An affected person as  
2 defined by the commission may file a written request for hearing on  
3 any claim.

4       Sec. 11.512. REVIEW OF CLAIM; INVESTIGATIONS; HEARINGS;  
5 FINAL DETERMINATION; APPEAL. (a) The commission shall review each  
6 claim and may conduct investigations as considered necessary to  
7 determine whether the information contained in the claim is correct  
8 and sufficient. For each claim, the commission may hold a hearing  
9 on its own motion, and it shall hold a hearing if a written request  
10 for hearing is received from an affected person, to determine all  
11 issues of fact or law necessary or appropriate to determine the  
12 rights claimed. The commission must give notice of the hearing by  
13 certified mail to the claimant, any person who has filed a request  
14 for hearing on the claim, and any person who has filed a request to  
15 be notified of any hearing on the claim. The notice must be given  
16 not later than the 30th day before the date of the hearing.

17       (b) The hearing shall be conducted as provided by Section  
18 11.337 of this code.

19       (c) On completion of the hearings, the commission shall make  
20 a determination of the claims to groundwater rights.

21       Sec. 11.513. APPEAL OF CLAIM. (a) Any affected person who  
22 appeared in the proceeding before the commission may appeal the  
23 commission's determination to a district court in Travis County.

24       (b) In passing on an appeal, the court shall determine all  
25 issues of law and fact independently of the commission's  
26 determination. The substantial evidence rule does not apply. The  
27 court shall not consider any issue that was not brought to the

1 commission's attention by application for rehearing, and shall not  
2 consider any issue of fact unless the record of evidence before the  
3 commission reveals that the question was genuinely in issue before  
4 the commission.

5 (c) A party in interest may demand a jury trial of any issue  
6 of fact, but the court may in its discretion have a separate trial  
7 with a separate jury for that issue.

8 Sec. 11.514. FINAL DECREE. (a) After the final hearing,  
9 the court shall enter a judgment affirming or modifying the  
10 determination of the commission.

11 (b) The court may assess the costs as it considers just.

12 (c) An appeal may be taken from the judgment of the court in  
13 the same manner and with the same effect as in other civil cases.

14 (d) A final judgment is conclusive as to all rights and  
15 claims to the groundwater rights in the Edwards Aquifer and is  
16 binding on all persons.

17 (e) Except for domestic and livestock use or rights  
18 subsequently acquired by permit, a groundwater right is not  
19 recognized in the Edwards Aquifer unless the right is included in a  
20 final unappealed determination of the commission with respect to  
21 the claim or, if appealed, the final judgment of the court.

22 Sec. 11.515. ISSUANCE OF CERTIFICATES; CONTENTS AND  
23 RECORDATION. (a) If a final determination of the rights to the  
24 groundwater of the Edwards Aquifer has been made in accordance with  
25 the procedure provided by this subchapter and the time for a  
26 rehearing has expired, the commission shall issue to each person  
27 who is recognized to have a groundwater right a certificate, signed

1 by the chairman and bearing the seal of the commission.

2 (b) In the certificate, the commission shall include:

3 (1) the name and mailing address of the person to whom  
4 the certificate is issued;

5 (2) the location of the well from which the withdrawal  
6 of groundwater is being made;

7 (3) the extent and purpose of the certificated right  
8 and, if the right is for irrigation, the legal description of the  
9 land to be irrigated; and

10 (4) other pertinent information the commission may  
11 determine.

12 Sec. 11.516. RECORDING OF CERTIFICATE. (a) The commission  
13 shall transmit the certificate by certified mail to the county  
14 clerk of the county in which the well is located.

15 (b) At the time the county clerk receives the certificate  
16 and is paid the recording fee he shall record and index the  
17 certificate in records kept for those purposes. The index must  
18 list alphabetically the names of the claimants. After he has  
19 recorded the certificate, the county records clerk shall deliver  
20 the certificate, on demand, to the claimant.

21 Sec. 11.517. REGISTRY OF CERTIFICATES; REPORTING. (a) The  
22 commission shall establish and maintain a registry of certificates  
23 for each county. The registry shall include a copy of each  
24 certificate and other information the commission determines to be  
25 necessary.

26 (b) A person to whom a certificate is issued shall notify  
27 the commission of a change in name or mailing address or any

1 transfer of the groundwater right. Any person to whom the  
2 groundwater right is transferred shall notify the commission of the  
3 transfer and shall furnish information as required by the  
4 commission to keep the registry accurate. The commission has  
5 continuing jurisdiction and shall issue revised certificates as  
6 necessary.

7 (c) The commission may require holders of certificates to  
8 file additional information as necessary to keep the registry  
9 accurate.

10 Sec. 11.518. AMENDMENTS TO GROUNDWATER RIGHTS REQUIRED.  
11 Each holder of a permit issued under Section 11.508 of this code  
12 and a certificate issued under Section 11.515 of this code shall  
13 obtain from the commission authority to change the place of use,  
14 location of the well, rate of withdrawal, acreage to be irrigated,  
15 or in any other manner alter a groundwater right. Rules adopted by  
16 the commission must provide that the holder of a permit or  
17 certificate has the right to substitute, modify, or otherwise  
18 change the holder's system of operation, including the substitution  
19 or addition of wells, so long as the total amount of groundwater  
20 withdrawn does not exceed the total amount recognized in the permit  
21 or certificate and if the holder complies with Section 11.519 of  
22 this code.

23 Sec. 11.519. APPROVAL FOR ALTERATIONS. (a) A person may  
24 not make any alteration, enlargement, or other change to a well  
25 without first obtaining the approval of the commission, except for  
26 an ordinary maintenance or emergency repair of the well and except  
27 as provided by Subsections (b), (c), and (d) of this section.



1       (b) Without obtaining commission approval, a person may  
2 complete the modification of a well if the modification was begun  
3 before September 1, 1989.

4       (c) Without obtaining commission approval, a person may  
5 modify a well if the modification does not alter the location or  
6 rate of production of the well.

7       (d) Without obtaining commission approval, a person may  
8 modify a well that is exempt under Sections 11.508(f) and (g) of  
9 this code if the well continues to qualify for exemption after that  
10 modification.

11       Sec. 11.520. TRANSFER RULES. (a) The commission shall  
12 adopt rules in accordance with this section for the transfer of  
13 groundwater rights from the Edwards Aquifer, which transfer may be  
14 by sale, lease, or other form of conveyance from certificate  
15 holders to any person, including a governmental body or political  
16 subdivision of the state.

17       (b) Without limitation, the transfer rules must be  
18 consistent with applicable law not inconsistent with this  
19 subchapter and the purpose of this subchapter and the public  
20 welfare.

21       (c) The transfer rules must:

22               (1) include priorities for groundwater supplies needed  
23 to protect public health, safety, and welfare;

24               (2) include provisions to prevent, to the extent  
25 possible, transfers of groundwater rights for purposes of  
26 speculation; and

27               (3) conform to conservation, reuse, and surface water

1 development programs consistent with the purposes of this  
2 subchapter.

3 Sec. 11.521. METERS. (a) Each claimant of a right to  
4 withdraw and use groundwater from the Edwards Aquifer or to  
5 complete construction of or maintain a well in the Edwards Aquifer  
6 shall install and maintain a meter designed to indicate the flow  
7 rate and the amount of groundwater withdrawn from that well on each  
8 well claimed under that right.

9 (b) The meter for each well capable of operation before  
10 September 1, 1989, shall be installed before September 1, 1990, or  
11 before any groundwater is withdrawn from that well, whichever is  
12 the later. For a well begun on or after September 1, 1989, the  
13 meter shall be installed before groundwater is withdrawn from that  
14 well.

15 (c) The commission shall adopt rules for determining the  
16 specifications of the meters, that shall include provisions for  
17 accuracy, reproductibility, and consistency.

18 Sec. 11.522. RECORDS AND ANNUAL REPORT OF GROUNDWATER  
19 WITHDRAWALS. (a) Not later than March 1 of each year, beginning  
20 in 1992, each claimant of a right or holder of a certificate or  
21 permit shall file with the commission a written report for the  
22 preceding calendar year on a form prescribed by the commission.

23 (b) The report must contain the information required by the  
24 commission to aid in administering this subchapter.

25 (c) Withdrawals of groundwater for domestic and livestock  
26 purposes are exempt from the recordkeeping and reporting  
27 requirements of this section.

1       (d) The commission shall establish late filing fees to be  
2 imposed on those persons who are required to but fail to file an  
3 annual report as required by this section.

4       (e) The records and reports required to be kept and filed  
5 under this section shall be in the form the commission prescribes.  
6 The commission shall prepare forms and provide them timely  
7 throughout the region of the Edwards Aquifer. Failure to receive  
8 or obtain the forms does not relieve a person from keeping the  
9 required records or making a required report.

10       Sec. 11.523. RETIREMENT OF GROUNDWATER RIGHTS. The  
11 commission shall encourage the retirement of rights to use  
12 groundwater from the Edwards Aquifer in whole or in part by the  
13 voluntary conveyance of all or part of those rights to any  
14 governmental agency or political subdivision of the state and not  
15 through the exercise of the power of eminent domain.

16       Sec. 11.524. CONSERVATION AND REUSE. (a) The commission  
17 shall adopt rules for the conservation of groundwater and shall  
18 administer and enforce those rules. Those rules shall provide that  
19 holders who implement effective conservation plans be allowed to  
20 retain the right to the conserved water for a beneficial use.

21       (b) A groundwater right includes the right to reuse the  
22 groundwater in accordance with rules adopted, administered, and  
23 enforced by the commission. The rules must encourage reuse and  
24 provide that, except to the extent found by the commission to be  
25 detrimental to the public welfare:

26       (1) a holder's right to groundwater intended for reuse  
27 may not be diminished solely because that groundwater has been

1 commingled with surface water, if transportation and  
2 evapotranspiration losses are taken into account;

3 (2) subject to all requirements to obtain the  
4 necessary discharge permits under this code, the groundwater may be  
5 transported from the point of discharge to a point of withdrawal;

6 (3) if practicable and permitted by law, the  
7 state-owned banks and beds of surface streams may be used for  
8 transport under Subdivision (2) of this subsection; and

9 (4) the groundwater may be stored in surface  
10 reservoirs owned or controlled by the holder, subject to any rights  
11 of others to those reservoirs and to the other water stored in  
12 those reservoirs.

13 Sec. 11.525. WASTEFUL USE OF WATER. A person may not waste  
14 groundwater. The commission shall adopt rules for the prevention  
15 of waste of groundwater and shall administer and enforce those  
16 rules.

17 Sec. 11.526. ABATEMENT OF WASTE AS A PUBLIC NUISANCE. (a)  
18 The commission may declare a well or groundwater delivery or  
19 application system causing waste a public nuisance and may take  
20 action to abate the nuisance. Any person who is injured by waste  
21 may sue in a district court in Travis County to have the operation  
22 of the well or system abated as a public nuisance.

23 (b) In case of wasteful use of groundwater, the commission  
24 shall declare the use to be a public nuisance and shall abate the  
25 nuisance by directing the person wasting the groundwater to cease  
26 using groundwater until the commission determines that provision  
27 has been made to stop the unlawful use of groundwater.

1       Sec. 11.527. PENALTY FOR WORKS DECLARED A PUBLIC NUISANCE.

2       (a) A person may not withdraw groundwater from a well or operate a  
3       groundwater delivery or application system or use groundwater under  
4       contract with any waterworks system that is declared to be a public  
5       nuisance.

6       (b) A person who violates this section commits an offense.  
7       An offense under this section is a misdemeanor and on conviction is  
8       punishable by a fine of not more than \$1,000 or by confinement in  
9       the county jail for not less than one year or by both.

10       Sec. 11.528. PENALTY FOR WASTE. A person who wilfully  
11       engages in waste of groundwater commits an offense. An offense  
12       under this section is a misdemeanor and on conviction is punishable  
13       by a fine of not more than \$500 or by confinement in the county  
14       jail for not more than 90 days or by both.

15       Sec. 11.529. DROUGHT MANAGEMENT PLAN. (a) The commission  
16       shall develop, implement, enforce, and amend, as necessary, a  
17       drought management plan in the region of the Edwards Aquifer in  
18       order to minimize, as far as practicable, the drawdown of the water  
19       table or the reduction of artesian pressure and spring flow, to  
20       prevent waste, and to protect the groundwater resources from  
21       serious harm.

22       (b) The drought management plan must include:

23               (1) objective standards for determining that drought  
24       conditions exist, continue, and cease and for determining stages of  
25       drought;

26               (2) a description of specific drought management  
27       activities for the stages of drought; and

1           (3) requirements for reducing water use in accordance  
2 with established priorities, that must include uses for essential  
3 human needs, agricultural, industrial, power, recreational,  
4 commercial, and other categories of use, and other matters the  
5 commission considers appropriate.

6           (c) The drought management plan must be adopted not later  
7 than June 1, 1990.

8           (d) On the commission's adoption of a drought management  
9 plan pursuant to this section, any other regional drought  
10 management plan applicable to the Edwards Aquifer is superseded by  
11 the commission's drought management plan.

12           Sec. 11.530. DELEGATION OF AUTHORITY. The commission may  
13 delegate any of its responsibilities and authority relating to the  
14 enforcement of rules under this subchapter to one or more political  
15 subdivisions of the state, except to the extent that the delegation  
16 is prohibited by other law. The commission may not delegate its  
17 authority to receive, review, and determine claims and issue  
18 certificates and permits recognizing groundwater rights.

19           SECTION 2. (a) This Act takes effect September 1, 1989.

20           (b) The Texas Water Commission shall adopt rules to  
21 implement Subchapter J, Chapter 5, Water Code, not later than  
22 January 1, 1990.

23           SECTION 3. The importance of this legislation and the  
24 crowded condition of the calendars in both houses create an  
25 emergency and an imperative public necessity that the  
26 constitutional rule requiring bills to be read on three several  
27 days in each house be suspended, and this rule is hereby suspended.

H. B. No. 2602

By Lineberger

A BILL TO BE ENTITLED  
AN ACT

relating to regulation of groundwater in the Edwards Aquifer  
by the Texas Water Commission; providing criminal penalties,

MAR 8 1991

MAR 27 1991

- 1. Filed with the Chief Clerk.
- 2. Read first time and Referred to Committee on NATURAL RESOURCES
- 3. Reported \_\_\_ favorably (as amended) and sent to Printer at \_\_\_  
(as substituted)
- 4. Printed and distributed at \_\_\_\_\_
- 5. Sent to Committee on Calendars at \_\_\_\_\_
- 6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)  
(Record Vote of \_\_\_ yeas, \_\_\_ nays, \_\_\_ present, not voting).
- 7. Motion to reconsider and table the vote by which H.B. \_\_\_\_\_ was ordered  
engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of \_\_\_ yeas,  
\_\_\_ nays, and \_\_\_ present, not voting).
- 8. Constitutional Rule requiring bills to be read on three several days suspended (failed  
to suspend) by a four-fifths vote of \_\_\_ yeas, \_\_\_ nays, and \_\_\_  
present, not voting.

- 9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote  
of \_\_\_ yeas, \_\_\_ nays, \_\_\_ present, not voting).
- 10. Caption ordered amended to conform to body of bill.
- 11. Motion to reconsider and table the vote by which H. B. \_\_\_\_\_ was finally passed  
prevailed (failed) by a (Non-Record Vote) (Record Vote of \_\_\_ yeas, \_\_\_  
nays, and \_\_\_ present, not voting).
- 12. Ordered Engrossed at \_\_\_\_\_
- 13. Engrossed.
- 14. Returned to Chief Clerk at \_\_\_\_\_
- 15. Sent to Senate.
- 16. Received from the House
- 17. Read, referred to Committee on \_\_\_\_\_
- 18. Reported favorably
- 19. Reported adversely, with favorable Committee Substitute; Committee Substitute read  
first time.
- 20. Ordered not printed.
- 21. Regular order of business suspended by  
(a viva voce vote.)  
(\_\_\_ yeas, \_\_\_ nays.)

Chief Clerk of the House

\_\_\_\_\_ 22. To permit consideration, reading and passage, Senate and Constitutional Rules  
suspended by vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_ 23. Read second time \_\_\_\_\_ passed to third reading by:  
(a viva voce vote.)  
( \_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

\_\_\_\_\_ 24. Caption ordered amended to conform to body of bill.

\_\_\_\_\_ 25. Senate and Constitutional 3-Day Rules suspended by vote of \_\_\_\_\_ yeas,  
\_\_\_\_\_ nays to place bill on third reading and final passage.

\_\_\_\_\_ 26. Read third time and passed by  
(a viva voce vote.)  
( \_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

OTHER ACTION:

OTHER ACTION:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_ 27. Returned to the House.

\_\_\_\_\_ 28. Received from the Senate (with amendments,  
(as substituted.)

\_\_\_\_\_ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record  
(Substitute) Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present,  
not voting).

\_\_\_\_\_ 30. Conference Committee Ordered.

\_\_\_\_\_ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record  
Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

\_\_\_\_\_ 32. Ordered Enrolled at \_\_\_\_\_

2092